Equality and Human Rights Commission

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123rd Board of the EHRC Minutes

Tuesday 21 January 2025 (12:30 – 17:45)
Tintagel House, 92 Albert Embankment, London, SE1 7TY

In attendance

Commissioners

Kishwer Falkner (Chairwoman), Lesley Sawers (Deputy Chair), Alasdair Henderson, Joanne Cash, Kunle Olulode, Martyn Jones, John Kirkpatrick (Chief Executive)

Officers

Moya Alcock, Director of Communications
Cihan Altan, Chief of Staff
Bill Malloy, Director of Finance, Planning and Governance
Amanda Topham, Head of Corporate Law and Information Governance
Miriam Bookman, Private Secretary
Anna Boaden, Director of Policy, Strategy, Human Rights Monitoring and Three Nations (items 7, 9, 10)
Catherine Chan, Senior Principal – Communications (item 12)
Sophie Clemens, Senior Associate – Strategy (V) (item 7)
Christopher Corfield, Senior Associate – Strategy (V) (item 10)
Harriet Harper, Project Manager – Litigation (V) (item 11)
Paul Hossack, Principal – Strategy (item 7)
Adam Sowerbutts, Director of Legal, Litigation and Enforcement (V) (item 11)

Guests

Helen Anderson, Office for Equality and Opportunity

Observers

Penny Hobman, Incoming EHRC Deputy Chief Executive

1. Chairwoman's introduction and apologies

1.1 The Chairwoman welcomed attendees to the meeting.

1.2 Apologies were received from Commissioners Reindorf and Richards.

2. Declarations of interest

2.1 The Wales Committee Chair noted his appointment to the South Wales Criminal Justice Statutory Group.

2.2 Commissioner Cash declared her membership of the Conservative Party and forthcoming elevation to the House of Lords as a Conservative peer.

2.3 The Chairwoman noted further updates to recorded declarations had been submitted to the Board Secretary.

2.4 The Interim Wales Committee Chair declared a potential interest as his employer is referenced in the CEO Report.

3. Minutes of the 121st Board Meeting

3.1 The Board approved the minutes of the 122nd meeting, subject to minor terminology amendments.

4. Actions Arising

4.1 The Board considered progress against actions previously arising.

4.2 Commissioners noted [Redacted due to confidentiality] a forthcoming finance meeting with the sponsorship department, scheduled for the week of 27 January and confirmation received with respect to ministerial portfolios relating to the EHRC.

4.3 The Board agreed that all Memorandums of Understanding (MoUs) should be subject to Board oversight, including one pending review with the Scottish Human Rights Commission (SHRC).

4.4 The Board approved the finalised Terms of Reference of the Quality in Public Reporting Committee.

5. Updates and assurance from Committees

5.1 The Audit and Risk Assurance Committee (ARAC) Chair reported:

a) The committee's ongoing concerns about the outdated framework document, which sets out the EHRC's relationship with the government and how it operates independently, and is awaiting Cabinet Office engagement to progress revision.

b) Continued monitoring of risk scores and, in relation to the concluding change programme, imminent consideration of whether governance risk remains out of tolerance.

c) Agreement of the internal audit plan for 2025-2026, combining clear actions and capacity for flexibility.

5.2 Board members noted the need for ARAC and all committee Chairs to monitor ongoing risk regarding an increase in enforcement duties without the necessary budget (such as from the Employment Rights Bill).

5.3 The People and Workspace Committee (P&WC) Chair reported:

a) The staff pay award and settlement for 2024-2025 had been negotiated amicably and quickly.

b) Headline figures from the People Survey 2024 were available and a detailed breakdown would be provided at the May Board meeting.

c) The ongoing internal review of policies will prioritise any that may no longer comply with legislation.

5.4 The Board agreed to amend the turnover Key Performance Indicator (KPI) to 16%, to align with the Civil Service benchmark and better reflect EHRC's operating environment.

Action: Update turnover KPI in line with Civil Service benchmark.

5.5 The Scotland Commissioner reported:

a) The Committee's discussion of the Strategic Plan on 11 December.

b) A request for further information and assurance relating to oversight of EHRC positioning on legal and policy issues.

Action: Chief Executive to provide an update to the Chairwoman on ensuring Board and Committee oversight of legal and policy positions.

5.6 Committee Chairs requested adequate time to review draft minutes, as soon as possible and preferably within five working days.

5.7 The Board noted the delay in updating the MoU with SHRC and requested the work is progressed as a priority and with appropriate Board oversight.

Action: MoU with the SHRC to be progressed and agreed.

5.8 The Interim Wales Committee Chair reported:

a) The committee's concern about the continued delay to ministerial appointment of a Wales Commissioner.

b) A request for resource to be directed towards supporting respectful discourse in the 2026 Senedd elections.

Action: To review and update the central government election guidance 'Freedom of Expression and respectful discourse: Guidance for political candidates and parties' for the purpose of 2026 devolved government elections.

5.9 The Chair of the Quality in Public Reporting Committee reported:

a) The EHRC's report on the International Covenant on Economic, Social, and Cultural Rights (ICESCR) has now been submitted to the United Nations Committee examining the UK in February 2025.

6. CEO Report

6.1 Commissioner Henderson noted past involvement in the independent expert advisory panel on the review of the Relationships, Sex and Health Education curriculum in 2023.

6.2 The Board:

a) Agreed that Commissioner attendance at the UN Committee on Economic, Social and Cultural Rights in Geneva would not be necessary in February, but that consideration should be given to other international engagements.

b) Noted the Chief Executive's oral evidence to the UK Parliament on the Employment Rights Bill on 28 November 2024.

c) Noted a meeting with the UN Independent Expert on Sexual Orientation and Gender Identity.

d) Discussed EHRC's response to the Relationships Sex and Health Education (RSHE) statutory guidance consultation in July 2024.

e) Received assurance on the provision of funding to Civil Society Organisations to attend the UN committee's ICESCR examination.

f) Noted that the Free Speech Union Ltd v The Secretary of State for Education judicial review hearing has been postponed until July 2025.

g) Noted a recent request to appear before the Public Bill Committee on the Terminally Ill Adults (End of Life) Bill on 29 January, and agreed that EHRC should attend but only reiterate existing policy as set out in its parliamentary briefing on the bill.

h) Noted that the London office would move in February to a more suitable space within the building.

Action: RSHE consultation response to be provided to the Chairwoman.

7. Finalising the Strategic Plan

7.1 The Board requested amendments to the draft Strategic Plan to:

a) Ensure flexibility is retained in Pillar 3 for work on issues yet to emerge, without unduly raising stakeholder expectations.

b) Emphasise updating and publishing the Equality and Human Rights Monitor as a significant project in the plan.

7.2 The Board requested amendments to the Consultation report, to emphasise areas within scope.

7.3 The Board discussed equality impact assessments and their publication, noting that, whilst the EHRC has demonstrated that it has due regard to its obligations under the Public Sector Equality Duty, it is not the Commission's practice to publish them; and, given implications for resources, accept it would be disproportionate to establish new practice in this instance.

7.4 The Board agreed:

a) The final Strategic Plan would be approved by the Chairwoman.

b) The final Consultation Report would be approved by the Chief Executive, in consultation with the Chairwoman.

Action: To table an agenda item on the prospective operation of the socio-economic duty's impact upon incorporation into England, and its resource and other implications for EHRC.

8. Risk Register Review and ARAC Effectiveness Review

8.1 The Board heard that the updated risk register reflects a better understanding of Accounting Officer, Board and ARAC roles.

8.2 Clarification was provided on the presentation of the seven strategic risks verses the 11 corporate risks. The Board agreed it requires regular sight of the seven strategic risks.

8.3 Commissioners received assurance on how risk management capability is being supported across EHRC, including through formal mechanisms (such as pro forma reporting) and informal approaches.

8.4 Technical solutions to stakeholder management and organisational structure to meet delivery needs within budget were discussed.

8.5 The Board:

a) Approved the corporate risk register in principle, subject to noted amendments and any further specific points to be addressed outside the meeting.

b) Approved risk roles and responsibilities as proposed.

8.6 The Board were informed of plans for the next ARAC Effectiveness Review to use the National Audit Office (NAO) recommended toolkit and engage an independent party to conduct the review, drawing on the results of the self-assessment and interviews they conduct with significant stakeholders.

8.7 The Board agreed questionnaire responses should be collated once an independent person is appointed.

9. Engaging with Government Advisory Groups

9.1 The Board noted that external engagement practices had been improving corporately. In discussion, the following points were made:

a) Greater clarity on the roles of Scotland and Wales Commissioners in external engagements was desirable. The Board agreed that invitations to participate in a devolved government advisory group should be escalated to the Scotland and Wales Commissioners where appropriate.

b) Engagements must constitute a good use of resource and contain views to EHRC positions. Correspondence should be considered as an alternative where appropriate.

9.2 The Board provided steers in order to preserve EHRC's independence and accountability that the developing approach should include:

a) Considering whether engagements are a good use of resource.

b) Avoiding participation in confidential groups.

c) Avoiding participation in groups where oversight responsibilities are requested.

10. Update on progress in response to the Sub-Committee on Accreditation's (SCA) recommendations

10.1 The Board discussed the paper, noting:

a) It was content with progress on actions taken by the EHRC to address the SCA's recommendations.

b) Activities should continue to influence the adoption of those recommendations that fall within the remit of central government.

c) With respect to the Framework Document, the Board agreed to reiterate concerns to the Chancellor of the Duchy of Lancaster, following the letter sent on 17 December 2024. In the absence of an adequate response, the Chairwoman would write to the Minister for Women and Equalities.

Action: Send follow up letter to the Chancellor of the Duchy of Lancaster regarding the Framework Document.

11. Code of Practice for Services, Public Functions, and Associations consultation responses – initial report

11.1 The Board noted the scale of the response to the consultation on the draft Code of Practice for Services, Public Functions and Associations and discussed advice on how the Code of Practice project should progress in relation to the timing of the

expected judgment in For Women Scotland Ltd v The Scottish Ministers (FWS).

11.2 The Board agreed that work should continue on all areas of the draft Code for submission with all due haste. Sections relating to sex and gender should be adapted as required following the FWS judgment, and potentially submitted later.

Action: To progress work on the Code of Practice for Services, Public Functions, and Associations and amend sections as required following the For Women Scotland Ltd v The Scottish Ministers judgment.

11.3 The Board agreed the most contested areas of the final version of the Code should be reviewed by additional external counsel and approved by remitted Commissioners ahead of publication.

Action: Additional external counsel to be instructed to review the most contested areas of the Code of Practice.

Action: Final draft of the most contested areas of the Code of Practice to be approved by remitted Commissioners prior to publication.

11.4 The Board noted that a Commissioner had previously questioned a section of the draft identified as requiring further consideration.

12. Stakeholder Engagement Deep Dive

12.1 The Board received a presentation on EHRC stakeholder engagement and provided the following steers:

a) The approach should focus on stakeholders of strategic importance: Government, Parliament, Assemblies and civil society, in a proportionate manner.

b) The level and nature of engagement with private business/unions should be considered given the increase

and salience of the EHRC's regulatory power and duties in relation to the workplace.

c) Engagement should be proportionate to EHRC's strategic priorities and informed by the forthcoming Strategic Plan.

12.2 The Board agreed to receive further information on engagement planning in the context of the strategic plan, government advisory work, and insights from surveys.

Action: Schedule Board discussion on stakeholder engagement strategy in the context of insight gathering, the Strategic Plan, and government advisory prioritisation.

12.3 A Commissioner expressed an interest in being the Board sponsor for this work.

13. Any Other Business

13.1 The Board acknowledged the Director for Finance, Governance and Planning's final Board meeting. Commissioners thanked him for his immense contribution to EHRC and wished him well on his next steps.

13.2 The next meeting of the EHRC Board is scheduled for 25 March 2025 in London.